

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

This is a pro se prison civil rights case brought pursuant to 42 U.S.C. § 1983. Now pending before the Court is Plaintiff's Motion for Permission to Appeal (#133). The motion is ripe and we now rule on it.

I. Background

1 On January 19, 2012, Plaintiff filed a Motion for Permission to
2 Appeal (#133) the Court's January 5, 2012 Order (#126) pursuant to
3 Federal Rule of Civil Procedure 54(b). Defendants submitted a Non-
4 Opposition (#141) on February 3, 2012. There was no reply.

5 6 II. Legal Standard

7 Federal Rule of Civil Procedure 54(b) provides that "the court
8 may direct entry of a final judgment as to one or more, but fewer than
9 all, claims or parties only if the court expressly determines that
10 there is no just reason for delay." A district court has discretion
11 when deciding whether to enter judgment under Rule 54(b). See
12 Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S. 1, 8 (1980). In
13 deciding such a motion, a district court must first determine that
14 there "is a decision upon a cognizable claim for relief, and it must
15 be 'final' in the sense that it is 'an ultimate disposition of an
16 individual claim entered in the course of a multiple claims action.'" Id.
17 at 7 (quoting Sears, Roebuck & Co. v. Mackey, 351 U.S. 427, 436
18 (1956)). Next, "the district court must go on to determine whether
19 there is any just reason for delay." Curtiss-Wright Corp., 446 U.S.
20 at 8. In making this determination, a district court should "consider
21 such factors as whether the claims under review were separable from
22 the other remaining to be adjudicated and whether the nature of the
23 claims already determined was such that no appellate court would have
24 to decide the same issues more than once even if there were subsequent
25 appeals. Id. Such factors are important in order to "preserve[] the

1 historic federal policy against such piecemeal appeals.” Mackey, 351
2 U.S. at 438.

3 4 III. Discussion

5 Plaintiff seeks a final judgment with respect to the Court’s
6 Order (#126) denying Plaintiff’s request for recusal of the Magistrate
7 Judge. In the alternative, Plaintiff seeks a stay in case proceedings
8 pending his request for review by the Court of Appeals.

9 As is made clear by the legal standard, our first task as a
10 district court deciding a Rule 54(b) motion is to determine that there
11 is a “final” decision upon a cognizable claim for relief. Curtiss-
12 Wright Corp., 446 U.S. at 7. Plaintiff seeks to appeal an Order
13 (#126) that decided none of Plaintiff’s claims for relief, but rather
14 denied Plaintiff’s request for recusal of the Magistrate Judge. Rule
15 54(b) authorizes the Court to enter final judgment as to one or more
16 claims or parties, but the Court has yet to decide any of Plaintiff’s
17 claims, and it did not do so in the Order (#126) Plaintiff seeks to
18 appeal. Because there has not been “an ultimate disposition of an
19 individual claim entered in the course of a multiple claims action,”
20 Mackey, 251 U.S. at 436, Rule 54(b) does not provide Plaintiff an
21 avenue to appeal the Court’s previous Order (#126), and Plaintiff’s
22 motion must be denied.

23 24 IV. Conclusion

25 Federal Rule of Civil Procedure 54(b) authorizes the Court to
26 enter final judgment on one or more, but fewer than all, claims. As
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1 the Court has yet to decide any of Plaintiff's claims, the Court
2 cannot enter final judgment on any of Plaintiff's claims. Plaintiff's
3 motion must therefore be denied.

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5 IT IS, THEREFORE, HEREBY ORDERED that Plaintiff's Motion for
6 Permission to Appeal (#133) is DENIED.

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10 DATED: August 16, 2012.

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12 UNITED STATES DISTRICT JUDGE